

Supreme Court, U.S.
FILED

No. _____

05-767 DEC 7 - 2005

In The OFFICE OF THE CLERK
Supreme Court of the United States

BRETT A. BURSEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
WITH APPENDIX

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QUESTIONS PRESENTED

In an effort to stifle peaceful protest against the President, the federal government has turned to a three decade old statute that was never intended for this purpose and has never been used for a criminal prosecution. This is the first appellate case to raise the central issues about the construction and constitutionality of this easily abused statute, specifically:

1. In light of the plain language of the statute and the canon of Constitutional avoidance, should the court construe that 1752(a)(1) requires secure areas to be plainly marked by ropes, signs, or some other similar device?
2. Do the First and Fourteenth Amendments prohibit government officials from declaring a hundred acres of public roads and public lands off limits to those who seek to peacefully protest the policies of the President, while allowing others to enter, remain in and pass through the unmarked restricted area?
3. Do the First and Fourteenth Amendments permit the federal government to leave decisions as to the size, contours, and rules for access to secure areas to the standardless and unfettered discretion of individual Secret Service officers?

PARTIES TO THE PROCEEDING

The following party was the Defendant-Appellant below and is the Petitioner before this Court: Mr. Brett Bursey.

The following party was the Plaintiff-Appellee below and is the Respondent before this Court: the United States of America.

There is no corporation that is a party to this case.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Brett A. Bursey, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the District of South Carolina, entered respectively on July 25, 2005 and January 6, 2004.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit that gives rise to this petition is reported at *United States v. Bursey*, 416 F.3d 301 (4th Cir. 2005). For the Court's convenience, it is reprinted at Appendix 1. The orders denying the petitions for reconsideration and rehearing *en banc* are unreported, and are reprinted at Appendix 64.

The opinion of the United States District Court for the District of South Carolina, filed on September 14, 2004, is unreported and is reprinted at Appendix 16-17 and 18-46. The order and verdict of the Magistrate Judge of the United States District Court for the District of South Carolina, entered on January 6, 2004, is unreported and is reprinted at Appendix 47.

STATEMENT OF JURISDICTION

The State of South Carolina, having failed in its attempt to charge Petitioner Brett Bursey with criminal trespass, Defendant Brett Bursey was charged with an offense against the laws of the United States. On January 6, 2004, the Magistrate Judge entered a verdict

and opinion resulting in the conviction of Defendant. Jurisdiction arose in the District Court pursuant to 18 U.S.C. § 3231. A timely appeal was taken from defendant's conviction before the Magistrate Judge pursuant to 18 U.S.C. § 3402.

The District Court Judge affirmed the conviction by judgment dated September 14, 2004 (Appendix 16) and a timely notice of appeal was filed on September 24, 2004. (Appendix 66). The Fourth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C § 1291, and granted review. The Fourth Circuit affirmed the judgment of the District Court and a timely motion for Rehearing and Rehearing *En Banc* was filed by the Petitioner. The Petition was denied on September 8, 2005. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of the Petition for Rehearing and Rehearing *En Banc*. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED IN THIS CASE

This case involves the First Amendment and Fourteenth Amendment to the United States Constitution, as well as Title 18 U.S.C. § 1752(a)(1)(ii), which provides, in relevant part:

- (a) It shall be unlawful for any person or group of persons—
- (b) Willfully and knowingly to enter or remain in

ii. Any posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting,

in violation of the regulations governing ingress or egress thereto[.]

This case also involves the implementing regulations of the aforementioned statute, 31 C.F.R. § 408.3, which state in relevant part:

(a) For the purposes of 18 U.S.C. § 1752 (84 Stat. 1891, 96 Stat. 1451), ingress or egress to or from...any posted, cordoned off, or otherwise restricted areas of a building or grounds where the President or other person protected by the United States Secret Service is or will be visiting is authorized only for the following persons:

(1) Invitees: Persons invited by or having appointments with the protectee, the protectee's family, or members of the protectee's staff;[...]

(b) Authorized persons must possess and display identification documents issued by or satisfactory to the United States Secret Service.